

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

WILLIAM I. KOCH, an individual,

Plaintiff,

V.

ERIC GREENBERG, an individual, ZACHYS WINE & LIQUOR STORE, INC. a New York corporation, and ZACHYS WINE AUCTIONS, INC., a New York corporation,

Defendants.

**Case No. 07 CIV 9600 (BSJ) (DCF)**  
**ECF Case**

**DEFENDANT ERIC GREENBERG’S OBJECTION  
TO IMPROPER REPLY DECLARATION**

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Attorneys for Defendant  
ERIC GREENBERG

Defendant Eric Greenberg hereby objects to the improper Reply Declaration of Bradley Leimkuhler, which was filed by Plaintiff William I. Koch (“Plaintiff” or “Koch”) in support of his Motion for Elimination or Modification of Protective Order and Application for Removal of Confidentiality Designations. Koch is not entitled to file new evidence in support of his motion in connection with his reply, but rather was required to submit such evidence along with his initial memorandum.

Moreover, this is the first time that Plaintiff has raised any objections, to Greenberg or to the Court, to the deposition testimony and documents attached to the Reply Declaration. Plaintiff has not previously met and conferred as to these documents and this testimony as required by the Court’s Protective Order. Plaintiff has also failed to seek an informal discovery conference with the Court regarding his objections as required by Local Rule 37.2.

Although Koch argues in his Reply that the Declaration of Adam Pollock shows that Koch did meet and confer, that declaration and the attachments thereto in fact show that Koch did not meet and confer as to any specific testimony or documents after July 2010. (Koch later challenged temporary blanket designations of several depositions by Greenberg as overbroad, but did not identify any specific designation he believed was improper. Moreover, counsel for Greenberg expressly informed counsel for Koch that the blanket designations were temporary, and those designations have since been replaced with specific designations by Greenberg, as to which Koch has not met and conferred.)

In paragraph 6 of the Reply Declaration, Mr. Leimkuhler purports to submit “evidence” in support of Koch’s challenge to Greenberg’s confidentiality designations as to the testimony of third parties Serena Sutcliffe, Lori Atherton, Thierry Lovato, Richard Brierley and Jamie Ritchie. (All of these individuals had access to Greenberg’s confidential business and personal

information and were questioned on these topics at their depositions.) However, Mr. Leimkuhler does not submit actual deposition testimony with his declaration, but rather “summarizes” (*i.e.*, characterizes) the testimony in Exhibit E to the Reply Declaration. Counsel’s characterization of testimony is not evidence and should not be considered by the Court, even if it had been timely submitted, which it was not.

For all of the foregoing reasons, Greenberg objects to the Reply Declaration of Bradley Leimkuhler and all attachments thereto. Greenberg respectfully requests that the Court decline to consider such purported evidence.

Dated: Poughkeepsie, NY  
December 23, 2010

Respectfully submitted,

By: /s/ Amy L. Hespenheide  
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